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Accountability Report Fiscal Year July 1, 2004 – June 30, 2005

Section I – Executive Summary

The South Carolina Medical Malpractice Patients' Compensation Fund (PCF) is a state agency, which was created by the General Assembly in 1976 for the specific purpose of providing medical malpractice coverage in excess of South Carolina healthcare provider's basic or primary insurance coverage. The PCF is authorized by Sections 38-79-410 through 38-79-490 of the South Carolina Code of Laws. The PCF is self-supportive through annual member fees and assessments, when appropriate. The PCF currently receives no federal, state or other funding. The PCF operates under the direction of a thirteen-member Board of Governors. The PCF contracts with the SC Joint Underwriting Association to provide a professional insurance brokerage and risk management services firm, Marsh USA, Inc., that provides underwriting services, claims & legal services to the PCF and its Board of Governors. The PCF issues certificates of membership and collects membership fees.

With the passing of S.83 *The Medical Malpractice Tort Reform*, the responsibility of the management of the funds of the PCF has been transferred to the Board of Governors of the PCF. The funds are deposited into two accounts, a Treasury account and an Investment Account. The Board of Governors is charged with close monitoring and management of these accounts. The Operating Fund of the PCF remains with the State Treasurer.

The PCF monitors claims and lawsuits against its members, which are investigated, handled and defended by the basic insurance carrier. The PCF pays any portion of settlements and/or judgments that are in excess of the member's basic coverage up to the member's limits of coverage. The PCF affords the same coverage that is afforded by the member's basic insurance policy, except for the amounts of liability coverage, which vary depending on the requests of the members. The PCF requires a minimum limit of \$200,000 per claim and \$600,000 annual aggregate of all claims under the member's basic coverage.

The PCF continues to make many positive changes under the direction of the Board of Governors. Some of the changes that have occurred are as follows:

- *Established Office Procedural Manual*
- *Established Part-time physician/dentist credit*
- *Approved varying rate increases based on the five different levels of coverage*
- *Approved 33.2% rate increase for member hospitals*
- *Approved a single limit of coverage of \$1,000,000 per occurrence/\$3,000,000 annual aggregate for Professional Association member*
- *Continues to revise and approve subspecialty rates including Bariatric Surgery and Spinal Surgery only*
- *Continues to offer limits of coverage for members ranging from \$1,000,000 per occurrence/\$3,000,000 per annual aggregate up to unlimited coverage*
- *Established a 50% surcharge for non-JUA members*
- *Discontinued writing General Liability coverage*

The PCF's mission is to provide excess medical liability coverage to its members who are South Carolina licensed healthcare providers at an affordable cost. The objective is to better serve the citizens of South Carolina through a viable and adequately funded malpractice program for physicians, dentists, hospital and other healthcare facilities. The PCF Board of Governors is committed to strengthening and preserving the Patients' Compensation Fund in order to assure that the licensed healthcare providers of South Carolina have adequate liability and litigation protection.

Assessment

The PCF Board of Governors again determined that a premium assessment was **not** necessary during this fiscal year. The last assessment was in June 2000. The statute grants the Board the authority to make assessments under Section 38-79-450 of the Code of Laws of South Carolina, 1976.

Rate Increase

Following an actuarial review, which was conducted at the direction of the South Carolina Department of Insurance, the PCF Board of Governors voted to implement the following rate increases for the varying limits of coverage:

- \$1,000,000 per occurrence/\$3,000,000 annual aggregate - .1% increase
- \$3,000,000 per occurrence/\$6,000,000 annual aggregate – 6.3% increase
- \$5,000,000 per occurrence/\$7,000,000 annual aggregate – 7.1% increase
- \$10,000,000 per occurrence/\$12,000,000 annual aggregate – 9.9% increase
- Unlimited coverage – 20% increase

Approximately 15% of the increase for the unlimited coverage is to be apportioned to assist in reducing the PCF's deficit. This increase was based on the actuary's recommendation and was

approved by the PCF Board of Governors. The Board of Governors considered a number of factors in their deliberations for a rate increase, including reducing the PCF's deficit, competitive place in the commercial market, actuarial review and providing affordable protections for the healthcare providers in the State of South Carolina.

The PCF Board has adopted a surcharge for any licensed healthcare providers who have had issues with regards to their State Board licensing. This surcharge applies to sanctions, license revocation or restrictions of the physician's license to practice medicine. The surcharge will remain with the member for a ten (10) year period and is reduced after five (5) years. An inquiry is made to the State Board of Medical Examiners on each new member who applies to the PCF.

Section II – Business Overview

The Patients' Compensation Fund now functions with a staff of five full-time equivalent employees. Last fiscal year an approval was granted to hire an additional full-time equivalent. Effective September 28, 2004, the PCF Board of Governors approved the promotion of Terry Coston to the position of Executive Director. With the approval of this promotion, Mary Ann West was promoted to the position of Program Manager. The temporary position was eliminated with the filling of the Fund Coordinator position.

At the close of the fiscal year, the PCF had a membership total of 7,166. This includes one nursing home, 35 clinics, 6 hospitals, 902 professional associations, 4339 physicians, 1,191 dentists and oral surgeons, 486 nurses and techs, 206 pharmacists and other healthcare providers. The PCF paid a total of \$40,597,208.87 for claims, settlements and judgments during the fiscal year. The PCF collected \$42,515,987.67 in membership fees.

Section III – Leadership

The Board of Governors is composed of three physicians, two dentists, two hospital representatives, two insurance representatives, two attorneys, and two representatives of the general public, all appointed by the Governor. The appointed members serve a term of six years. Currently we are awaiting the replacement of one physician member and one at-large member. The Governor recently appointed the defense attorney member and one at large member.

The Board continues to amend its plan of operation for efficient administration of the Fund, consistent with the provisions of the plan of operations and Article 5 of the enabling legislation.

Strategic Planning

A Strategic Planning Committee has been established for the purpose of engaging in extensive planning for the future of the PCF. The committee is chaired by the Director of the Department of Insurance.

The Board continues ongoing revisions to the Plan of Operation, Underwriting Manual of Rules and Rates and Claims Handling Procedures. The Board continues to review and considers

legislative changes, which will allow for the more efficient operation and management of the Fund. The plan of operation details procedural information that provides for economic, fair and nondiscriminatory administration and for prompt and efficient provision of excess medical malpractice insurance. The plan contains other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, reasonable underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers and procedures for determining the amounts of insurance to be provided by the Fund. The plan of operation and any amendments to the plan are subject to the approval of the Director of the Department of Insurance or his designee.

Customer Focus

The Fund provides customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments, payment of claims and membership inquiries. It provides credentialing information to hospitals and managed care organizations.

The Board has authorized the revision of the membership agreement and the development of applications to better serve its members. The Board continues to allow its members to pay their annual membership fee on a quarterly basis, with a small handling fee.

Physicians and dentists that attend the South Carolina Medical Association and South Carolina Dental Association Risk Management Seminar, which is sponsored by the South Carolina Medical Malpractice Liability Insurance Joint Underwriting Association (JUA), receive a discount in their annual membership fee. The discount is equivalent to a maximum of 25% of the base premium, up to a maximum of \$2,000. It is a one-time discount fee. The discount does not apply to a physician's professional association.

The healthcare providers are credentialed by hospitals, insurance companies and managed care organizations. In order to obtain hospital privileges and participate in managed care organizations, healthcare providers must show proof of professional liability insurance coverage, as well as any claims history. The PCF receives approximately 6,000 requests for this information annually and the PCF provides these requests to its members with a sense of urgency.

Information and Analysis

The Agency has upgraded its computers and technology equipment throughout the period. This includes the purchase of new computers, monitors, needed software and a new off site server. More improvements are expected throughout this coming year including a link to the SC JUA database that will allow for immediate viewing of JUA underwriting data, downloading, copying and access to reports. This will greatly improve efficiency. The Agency continues to utilize the services of an independent vendor for programming purposes, which are critical to the ongoing service efforts due to customer needs. The Agency is currently using the state resources to develop a website to give our customers additional membership resources.

Human Resources Focus

As previously stated, the Agency now consists of five full-time employees. The Board of Governors approved the filling of the Executive Director position which is currently held by Terry Coston, formerly the Program Manager. The Director has filled all vacant positions with current and/or part-time employees. She, along with the Board of Governors, continues to closely monitor the employees' ability to meet the demands and needs of its members which has resulted in the addition of one full-time. All required OHR reporting is completed in a timely manner.

The PCF is an organization that works extensively with legal counsel for claims defense, expert witnesses, and claims investigations, all in conjunction with the primary carrier. The effective selection, coordination and management of these professionals are critical to the success of the PCF. It requires employees with special skills and a high work ethic.

Management Controls

Following the Legislative Audit Council's report of January 2000, a new PCF Board of Governors was appointed. The PCF has implemented the following management controls to ensure the proper administration of the Fund:

- Written policies and procedures
- No longer grant retroactive coverage after a claim is filed
- All information from primary insurer is verified including proper documentation of loss dates, settlement amounts and coverage before payment is made by the Fund
- Controls implemented to ensure accuracy in its computer database
- Implementation of proper computer training to assure all employees have the necessary skills to service our members
- Proper procedures established to ensure timely reporting of claims by the basic carrier and its members
- PCF reports all claims to the National Practitioner Database as required
- PCF does not use proxies for voting and quorums. Confidential matters are discussed in Executive Session. Minutes are taken for all Board Committee Meetings
- PCF attempted to promulgate its regulation to establish Board Policy as required under the Administrative Procedures Act with the help of the Department of Insurance. It did not pass at the hearing. The Chairman asked that it be removed because of trial lawyer's objections.
- Two PCF Board members appointments are awaiting executive approval
- By statute, the PCF has authority to determine amount of insurance to be provided. The PCF implements variable limits effective July 1, 2003. The PCF continues to offer the option of unlimited liability to its members

In 2004 the Legislative Audit Counsel completed a follow up audit which resulted in a finding that the Patients' Compensation Fund has "much improved." They state that this Agency has made significant improvements in its operations since the January 2000 audit report. The Agency has substantially complied with most of the audit's recommendations.

“The Patients’ Compensation Fund made significant operational changes in response to the audit. It has substantially complied with most of the audit’s recommendations. The PCF has developed and implemented a plan of operations, a manual of rules and rates, and a claims manual. These policies cover many aspects of the PCF’s operations and provide a system of management controls. The PCF is now prohibited by statute from granting retroactive coverage to members when a claim has been filed, and this policy is also stated in its manual of rules and rates. The agency has upgraded its computer system and improved its training and controls over information.

The PCF plan of operations contains provisions for conducting meetings in compliance with the Freedom of Information Act, including a prohibition on the use of proxies to establish a quorum and provision for the appropriate use of executive sessions. The PCF attempted to promulgate a regulation to comply with the Administrative Procedures Act as recommended in the audit. However, the regulation was withdrawn in the face of opposition and has not been resubmitted. The former executive director resigned his position; the PCF is now staffed with a program manager and has contracted with the Joint Underwriting Association for Management oversight services.”

Business Results

The principal challenge of the PCF is to retain current members and at the same time, increase premiums to reduce the loss reserves liability. Revenue is needed to maintain agency solvency, but it is a delicate balance, as a significant loss in members would result in a dramatic increase in premiums for those members who remain in the Fund. The other significant challenge is to manage the claims process effectively and coordinate same with the primary carriers for satisfactory resolution of all claims.

The PCF’s goal is to provide medical professionals with effective medical malpractice liability coverage, while ensuring that the PCF is in a financially sound position to pay all of its liabilities.